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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JASVIR SINGH,

11 Plaintiff,

12 v.

13 UNITED STATES CITIZENSHIP  
14 AND IMMIGRATION SERVICES,  
et al.,

15 Defendants.

CASE NO. C19-1873JLR-MLP

ORDER GRANTING MOTION  
TO DISMISS AND DENYING AS  
MOOT SECOND MOTION FOR  
EMERGENCY STAY OF  
REMOVAL

16 **I. INTRODUCTION**

17 Before the court are (1) Defendants United States Citizenship and Immigration  
18 Services, United States Department of Justice, and United States Department of  
19 Homeland Security's (together, "the Government") motion to dismiss (*see* MTD (Dkt.  
20 # 14)); and (2) Plaintiff Jasvir Singh's second emergency motion for stay of removal (*see*  
21 2d TRO (Dkt. # 19)). The court has reviewed the motions, the parties' submissions in  
22 support of and in opposition to the motions, the relevant portions of the record, and the

1 applicable law. Being fully advised, the court GRANTS the Government's motion to  
2 dismiss with prejudice and DENIES as moot Mr. Singh's second motion for stay of  
3 removal.

## 4 **II. BACKGROUND**

5 Mr. Singh, who is proceeding through counsel, filed this action under the  
6 Administrative Procedures Act ("APA") to obtain review of an asylum officer's and  
7 immigration judge's negative credible fear determinations and expedited removal order.  
8 (*See* Compl. (Dkt. # 1-2).) Mr. Singh alleges that he has a credible fear of being returned  
9 to India based on animus he faced in India on the basis of his political beliefs. (*See* 2d  
10 TRO at 2-4.)

11 Mr. Singh has been detained at the LaSalle Correction Center in Olla, Louisiana  
12 since January 3, 2020. (Dumont Decl. (Dkt. # 15) ¶ 8.) He entered the United States  
13 without inspection after crossing the border near San Ysidro, California, on May 22,  
14 2019. (Compl. ¶ 8.1; Lambert Decl. (Dkt. # 16) ¶ 2, Ex. A.) The Government  
15 commenced the credible fear process after Mr. Singh informed officers that he sought  
16 asylum. (Comp. ¶ 8.1.) On June 5, 2019, United States Immigration and Customs  
17 Enforcement ("ICE") took Mr. Singh into custody and transferred him shortly thereafter  
18 to Tallahatchie County Correctional Facility in Tutwiler, Mississippi. (Dumont Decl.  
19 ¶ 3.) On July 10, 2019, an asylum officer interviewed Mr. Singh and made a negative  
20 credible fear determination. (*See* Compl. ¶¶ 8.1-8.2.) Mr. Singh requested that an  
21 immigration judge review the determination. (*Id.* ¶ 8.3.) On July 29, 2019, ICE  
22 transferred Mr. Singh to Pine Prairie ICE Processing Center in Pine Prairie, Louisiana.

1 (Dumont Decl. ¶ 5.) On August 12, 2019, the immigration judge affirmed the negative  
2 credible fear determination and returned the case to ICE for Mr. Singh's removal. (*Id.*  
3 ¶ 6.) Four days later, Mr. Singh filed a habeas petition in the Fifth Circuit that was  
4 dismissed on September 26, 2019. (Compl. ¶ 8.7; Dumont Decl., ¶ 7.) Mr. Singh is  
5 currently detained at LaSalle Correction Center. (Dumont Decl. ¶ 8.)

6 On January 5, 2020, Mr. Singh filed an emergency motion seeking a stay of  
7 removal in this case. (1st TRO (Dkt. # 9).) The court denied that motion on January 7,  
8 2020. (1/7/20 Order (Dkt. # 10).) The court found that Mr. Singh had failed to "show a  
9 likelihood of success, serious legal questions, or a substantial case on the merits" because  
10 "the Immigration and Nationality Act expressly precludes judicial review of Plaintiff's  
11 challenge to his expedited removal order and negative credible fear finding." (*See id.* at 2  
12 (citing 8 U.S.C. § 1252(a)(2)(A)).) The court also noted that individuals may challenge  
13 removal proceedings via habeas petitions, but that Mr. Singh could not rely on habeas  
14 caselaw to support his claims because he did not file a habeas petition.<sup>1</sup> (*See id.* at 2-3.)

### 15 III. ANALYSIS

16 The Government moved to dismiss Mr. Singh's complaint for lack of jurisdiction  
17 on February 24, 2020. (*See* MTD at 8.) The Government argues that (1) the Immigration  
18 and Nationality Act ("INA") precludes judicial review of Mr. Singh's challenge to his  
19 removal orders and negative credible fear determination, and (2) Mr. Singh cannot seek  
20 habeas relief in this court. (*See id.* at 5-8.) Mr. Singh opposes the Government's motion.

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22 <sup>1</sup> The court also noted that it would have been improper for Mr. Singh to file a habeas  
petition in this district because he is currently detained in Louisiana. (*See id.* at 3-4.)

1 (See MTD Resp. (Dkt. # 17).) While the Government’s motion to dismiss was pending,  
2 Mr. Singh filed a second emergency motion for a stay of removal. (See 2d TRO.) Mr.  
3 Singh’s second motion mirrors his first. He asks the court to “reconsider” its prior ruling  
4 that temporary injunctive relief was not warranted because the INA precludes judicial  
5 review of this case (*see id.* at 9-10) and otherwise recycles the same arguments presented  
6 in his first emergency motion for a stay of removal (*see id.* at 10-19).

7 The court first addresses the Government’s motion to dismiss before turning to  
8 Mr. Singh’s second emergency motion for a stay of removal.

9 **A. Motion to Dismiss**

10 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) tests the  
11 court’s subject matter jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035,  
12 1039 (9th Cir. 2004); *see also Oregon v. Legal Servs. Corp.*, 552 F.3d 965, 969 (9th Cir.  
13 2009) (“An objection that a federal court lacks subject matter jurisdiction may be raised  
14 at any time.”). Federal courts are courts of limited jurisdiction, only possessing the  
15 power authorized by the Constitution and statutes. *Kokkonen v. Guardian Life Ins. Co. of*  
16 *Am.*, 511 U.S. 375, 377 (1994). As a starting point for this analysis, it is assumed that the  
17 district court lacks subject matter jurisdiction, and the party asserting the claim bears the  
18 burden of establishing that subject matter jurisdiction exists.” *In re Dynamic Random*  
19 *Access Memory Antitrust Litig.*, 546 F.3d 981, 984 (9th Cir. 2008) (citing *Kokkonen*, 511  
20 U.S. at 377). “When a motion to dismiss attacks subject matter jurisdiction under Rule  
21 12(b)(1) on the face of the complaint, the court assumes the factual allegations in the  
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1 complaint are true and draws all reasonable inferences in the plaintiff's favor." *City of*  
2 *L.A. v. JPMorgan Chase & Co.*, 22 F. Supp. 3d 1047, 1052 (C.D. Cal. 2014).

3 Mr. Singh fails to establish a basis for the court's subject matter jurisdiction in this  
4 case. Although Mr. Singh argues that the APA provides a basis for judicial review  
5 (Compl. ¶ 1.1; MTD Resp. at 2 ("An action pursuant to [the] Administrative Procedure  
6 Act is the proper means for seeking remedy when such a violation has occurred due to  
7 malfeasance by an administrative agency.")), APA review is not available here. The  
8 APA provides a source of judicial review of agency actions except to the extent a statute  
9 expressly precludes such review. 5 U.S.C. § 701(a); *see Lincoln v. Vigil*, 508 U.S. 182,  
10 191 (1993). As the court has already ruled, the INA prohibits judicial review of  
11 expedited removal orders and the credible fear process. *See* 8 U.S.C. § 1252(a)(2)(A)  
12 (stating that "no court shall have jurisdiction to review . . . except as provided in  
13 subsection (e), any individual determination or to entertain any other cause or claim  
14 arising from or relating to the implementation or operation of an order of removal  
15 pursuant to § 1225(b)(1) of this title"); (*see also* 1/7/20 Order at 2 ("Here, the  
16 Immigration and Nationality Act expressly precludes judicial review of Plaintiff's  
17 challenge to his expedited removal order and negative credible fear finding.")) The  
18 limited carveouts in § 1252(e) are also inapplicable to this case. (*See* 1/7/20 Order at  
19 2-3.) Although Mr. Singh attempts to argue that § 1252 does not preclude judicial review  
20 (*see* MTD Resp. at 4-6), he does not provide any authority interpreting § 1252 that would  
21 allow the court to ignore the express prohibition of judicial review included in that  
22 statute.

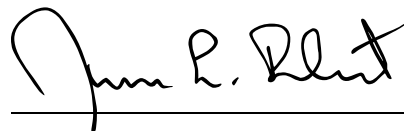
1 Although the court also agrees with the Government that Mr. Singh cannot attempt  
2 to recast his claim as one for habeas relief to avoid dismissal (*see* MTD at 7-8; 1/7/20  
3 Order at 3-4), Mr. Singh has not made that argument in response to the motion to dismiss  
4 (*see generally* MTD Resp.). Accordingly, the court need not address that issue further.

5 In sum, because the court has no jurisdiction to review Mr. Singh's complaint  
6 pursuant to the INA, the court GRANTS the Government's motion to dismiss for lack of  
7 jurisdiction with prejudice. Because the court dismisses this case and concludes that it  
8 lacks jurisdiction over Mr. Singh's claims, the court also DENIES as moot Mr. Singh's  
9 second emergency motion for a stay of removal.

#### 10 IV. CONCLUSION

11 For the reasons set forth above, the court GRANTS the Government's motion to  
12 dismiss (Dkt. # 14) with prejudice and DENIES Mr. Singh's second emergency motion  
13 for a stay of removal (Dkt. # 19).

14 Dated this 12th day of June, 2020.

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17 JAMES L. ROBART  
18 United States District Judge  
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